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**Testimony for Senate Bill 309
State Employment – Local School Employees - Clarification
Senate Budget and Taxation Committee
February 15, 2023
1:00 P.M.**

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Director, Legislative Affairs
State Retirement Agency**

The Board of Trustees for the State Retirement and Pension System (System) wishes to express its opposition to Senate Bill 309, State Employment – Local School Employees - Clarification.

Senate Bill 309 would prohibit an individual from being deemed an employee of the State by reason of the individual's status as a member of the Teachers' Retirement System (TRS) or the Teachers' Pension System (TPS). The State Retirement Agency (Agency) is concerned that by including a provision in the State Personnel and Pensions Article that an individual is not necessarily a State employee by virtue of their membership in the TRS or TPS, may create issues under the Internal Revenue Code (IRC) that require members of the System to be governmental employees.

Section 414(d) of the IRC provides that a retirement plan is a “governmental plan” if the plan is established and maintained for its employees by the government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. Including a provision in Division II of the State Personnel and Pensions Article (the portion of the Article that governs the State Retirement and Pension System) that explicitly prohibits a member of the TRS or TPS from being deemed a State employee, without including an equally explicit statement that members of the TRS and TPS are employees of a political subdivision, may be viewed as contrary to provisions of § 414(d) and call into question the System’s standing as a governmental plan.

While the Agency’s concern regarding its standing as a governmental plan may suggest the bill should be amended to include a provision affirmatively stating that members of the TRS or TPS are employees of a political subdivision, the Committee should note this creates additional concerns for members of the TRS and TPS. Currently, both State and local employees participate in the TRS or TPS. Affirmatively stating that only employees of a political subdivision may be members of the TRS or TPS would raise questions about the status of State employees of the University System of Maryland participating in the TRS or TPS.

The Committee should also note that if the intent of the bill is to clarify that public school teachers in Maryland are employees of their county board of education, §§ 22-205 and 23-206 of the State Personnel and Pensions Article, at present, address this issue for the TRS and TPS, respectively. Each provision provides, in part, that the membership provisions for the TRS and TPS apply only to an employee of a

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day school in the State under the authority and supervision of a county board of education or the Baltimore City Board of School Commissioners, employed as:

- (i) an attendance officer;
- (ii) a clerk;
- (iii) a helping teacher;
- (iv) a principal;
- (v) a superintendent;
- (vi) a supervisor; or
- (vii) a teacher.

In reviewing Senate Bill 309, the Agency is unaware of any instance where an individual's employee/employer status was questioned as a result of the individual's membership in one of the several systems, which includes both State and local employees. Therefore, to avoid the issues we have raised above, we would recommend amending, instead, provisions of the Education Article that do speak to the employee/employer relationship of individuals employed by a county board of education or the Baltimore City Board of School Commissioners. A review of the Education Article has revealed that this issue has previously been addressed in § 6-901 of the Education Article which defines a public school employee to mean any individual who is employed by a public school employer or an individual of equivalent status in Baltimore City. This section further provides that a public school employee does not include a State employee. Finally, § 6-901 also defines a public school employer to mean a county board of education or the Baltimore City Board of School Commissioners. While we recognize that the definitions included in § 6-901 are intended for the Public School Employee Whistleblower Protection Act, a similar definition could be provided in a more appropriate section of the Education Article.

We appreciate being given the opportunity to raise these issues with the Budget and Tax Committee and stand ready to provide any further information or services the Committee may need regarding Senate Bill 309.